IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2149 of 2006

Date of Decision: December 14, 2007

Jai Pal and another .....Appellants.

Versus

Deepak Kumar and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.SK Sharma, Advocate for the appellants.

Ms.Madhu Sharma, Advocate for respondent No.2.

S. D. ANAND, J.

1. The plea of the appellants for award of compensation under Section 163 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") in respect of the death of their son Sombir was declined by the learned Tribunal by recording a finding that the deceased was himself responsible for the causing of the impugned accident.

2. The view deserves outright reversal in view of the law laid down by a Full Bench of Kerala High Court in **National Insurance Co.Ltd. Vs. Malathi C.Salian, 2003(4) RCR (Civil) 745**. The Full Bench appraised the connotation in entirety of provisions of Section 140 and 163-A of the Act and arrived at the following finding:

> "The liability to pay compensation under Section 163A is on the principle of no fault and, therefore, the question as to

> who is at fault is immaterial and foreign to an enquiry under Section 163A. Section 163A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimants naturally the claimants will have to lead evidence which would defeat the object and purpose of Section 163A. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or disablement occurred during the course of the user of the vehicle and the vehicle is insured the insurance company or the owner, as the case may be, shall be liable to pay the compensation. This is a statutory obligation. Claimant is therefore entitled to get legitimate amount on the basis of the structured formula based on the no fault theory from the insurance company or the owner or owners of the vehicle on the plea that the liability is joint and several."

3. In obtaining that view, the Full Bench drew sustenance from the Apex Court ruling in **Kaushnumma Begum Vs. New India Assurance Co.Ltd., 2001(1) RCR (Civil) 559 (SC).**

4. In the light thereof, the view obtained by the learned Tribunal shall stand reversed. It is held that the appellants are entitled to compensation under Section 163-A of the Act. As the learned Tribunal refrained from assessing the compensation payable to the appellants and proceeded to dispose of the relevant petition on point of maintainability itself, the matter shall be listed before it for quantification of the

compensation to which the appellants are entitled. The exercise shall be concluded by the learned Tribunal within one month from the date the matter is listed before it along with a copy of this order.

5. The parties represented before this Court, through their learned counsel, are directed to appear before the learned Tribunal on 10.1.2008.

6. The appeal shall stand disposed of accordingly.

(S. D. ANAND)
JUDGE

December 14, 2007
SRM

Note: Whether referred to reporter ? Yes/No